

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 387 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

HETALBEN RAMESHBHAI SHAH BY P.O.ATT.RAMESHBHAI S SHAH

Versus

RAVIRAJ CONSTRUCTIONS CO. BY BHIMASHIBHAI R JHALA

-----

Appearance:

MR AD PADIVAL for Petitioner

-----

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 10/04/96

ORAL JUDGEMENT

1. This CRA is filed by the petitioner-plaintiff against the judgment and order passed by the 2nd Joint Civil Judge (SD) Junagadh dated 20.1.1995\6. By the said order it is directed that the application Exh.25 which is given by the plaintiff under Order 39 Rule 2A of CPC should be decided along with the suit. In fact the grievance of the petitioner-plaintiff was that despite the order of maintenance of statusquo passed by the trial court and despite report submitted by the Court

Commissioner the respondent-defendant has in blatant disregard of the order of the court sold the flat in question which was agreed to be sold to the petitioner to some third party and has inducted the third party into possession and has thereby committed breach of order of the court. The trial court has found that the said application under Order 39 Rule 2A CPC can not be decided unless some evidence is produced and that therefore it is directed that such application should be decided along with the suit.

2. Having heard Mr.A.D.Padiwal, Ld.advocate for petitioner as well as Mr.S.M.Shah, Ld.advocate for respondent this court is of the opinion that when an application is moved under Order 39 Rule 2A of CPC making that the party has committed breach of order of injunction passed by the trial court, ordinarily, such application should be decided forthwith or expeditiously and the party allegedly committed breach of injunction can not be permitted to enjoy the fruits of his act of violation of the order of the court, if there is any violation. The approach of the courts of law in such cases should be to decide such application on priority basis. To postpone the hearing of such application along with the suit is to render the provisions of Order 39 Rule 2A of CPC absolutely meaningless and otiose. The trial court has, in my opinion, very casually and without understanding the obligation cast upon it by the Legislature passed the impugned order and hence same is hereby quashed and set aside and the trial court is directed to decide the said application at Exh.25 in original Reg.C.S.No.315/95 which is now re-numbered as Special Civil Suit No.115/95 on or before 15th July, 1996. The trial court is also directed to report the compliance of this order to this court. The District Judge, Junagadh is also directed to see that the order of this court is complied with by the trial court. Writ of this judgment be sent down along with the copy of judgment to the trial court as well as the District Court at Junagadh. Rule is made absolute accordingly. No costs.

...